

**OPINION
60-135**

March 2, 1960(OPINION)

INSANE, FEEBLEMINDED, ETC.

RE: Expense and Care of Patients - Person Legally Responsible

This is in reply to your request for an opinion on the question whether or not the father, mother or guardian would be personally responsible for the support of their child at the state school. You also ask, "If so, to what age would this liability for support continue? In other words, would liability for support of child end at majority?"

The question pertains to Chapter 25-08 of the N.D.R.C. as amended. More specifically, the provisions of Section 25-0822 of the 1943 Code must be construed and interpreted. This section as material here provides that:

The person legally responsible for the support of any patient at the state school shall pay to the county treasurer monthly, for the use of the county or state, the amount properly chargeable for the care of such patient at such institution. . . ."

The phrase "person legally responsible" seems to be the key phrase of language involved. In this connection we find that the North Dakota Legislature by Section 14-0910 of the N.D.R.C. of 1943 provided that:

It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person"

This Section has been construed by the North Dakota Supreme Court in instances where the parent was suing on behalf of the loss of the services of a child resulting from wrongful death. The court held that this statute was applicable. This statute is a two way statute. Under common law there was some doubt whether a child was legally responsible for the care of a parent, but the court in considering this statute seemed to erase any doubt as to such responsibility in North Dakota. Where the court has given such great weight to this statute with respect to a child's responsibility to support a parent, we can have no hesitation whatsoever to say that the parent is legally responsible for the support of the child. As to the court's construction of this statute see 68 N.D. 374, Bismarck Hospital v. Gordon T. Harris.

As to the benefits that a parent might have from the support of a child, also under this Section see 89 N.W. 2d. 1, Henke v. Peyerl.

The rule of law placing a legal obligation on the parent to support the child is one resting on common law and also statutory law. In Am. Jr. Volume 39, Parent and Child, Section 40, page 645, we find what appears to be the general rule of law.

In the absence of some legally sufficient reason for relieving a parent of the responsibility at an earlier date, the obligation to support his children continues during his lifetime until they reach the age of majority, or, in the case of physically or mentally defective children, until the necessity for support ceases. . . ."

In the absence of any other condition or provision I would say the above rule applies.

The opinion you referred to apparently related to a state hospital. However, such opinion would no longer be controlling on the basis that Section 25-0826 has been amended to remedy what appeared to be a defect in the law making it difficult to recover the expense of any person in the institution.

As to the question at hand, we must also consider provisions of Section 25-0823 which provides:

If any person who is legally responsible for the support of a patient at the state school is unable to pay for the care and support of such patient as required by section 25-0822, he may apply to the county judge of the county from which such patient was admitted for a certificate to that effect. . . ."

It would thus appear that the father or mother are persons held legally responsible for the support of such child unless they obtain a certificate from the county judge to the contrary. There is some law that the husband is only responsible for the support of his child during his lifetime. Authorities are divided on the question whether the husband's estate is liable for the support of the child after his death. However, in this instance I am assuming that there is both a father and a mother and in the event that one should die the other still remains.

It therefore is my conclusion that the father and mother, either separately or jointly, are persons legally responsible for the care and support of a child at the state school.

It is my further conclusion that this support continues until the child is no longer in need of such support. In other words the mere fact that the child reaches majority does not relieve the parents from the legal responsibility for the child's support. There might be some other factors involved such as the statute of limitation which we are not required to answer now but might be taken into consideration at another time.

It is therefore my recommendation that a claim against the father or mother or both be filed for the care and maintenance of the child while in the state school.

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Attorney General